

**Below is a Memorandum Decision of
the Court.**



Mary Jo Heston
Mary Jo Heston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

In re:

LEAH OLSON,

Debtor.

KATHRYN ELLIS,

Plaintiff

v.

JEFFREY OLSON,

Defendant

Case No. 21-40567-MJH

Adversary No. 23-04009-MJH

**MEMORANDUM DECISION ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

This matter came before the Court on October 19, 2023, on Defendant Jeffrey Olson's ("Mr. Olson") July 13, 2023, motion for summary judgment (Motion) filed in the above-referenced proceeding pursuant to Federal Rule of Bankruptcy Procedure 7056 (the "Motion"). Plaintiff Kathryn Ellis, the Chapter 7 trustee ("Trustee"), opposes the Motion. Following the close of discovery and the completion of the record on November 16, 2023, as more fully set forth below, the Court took the Motion under advisement. The Court,

1 having considered the arguments of counsel and the record for the Motion as set forth
2 below, states its opinion is as follows:

3 4 **I. PROCEDURAL HISTORY**

5 On April 19, 2023, the Trustee filed this adversary proceeding. Pl.'s Compl., ECF No.
6 1. The complaint alleges a fraudulent transfer under § 548(a)(1), RCW 19.40 applicable
7 through § 544(b), or both related to two quit claim deeds executed by Leah Olson (Mrs.
8 Olson) in favor of Mr. Olson in 2018 and 2019. Pl.'s Compl., ¶¶ 8-26. On May 19, 2023,
9 Mr. Olson filed his answer to the complaint. Def.'s Answer, ECF No. 4.

10 On July 13, 2023, Mr. Olson filed the Motion together with the supporting declarations
11 of Mr. Olson and Debtor, Mrs. Olson. Def.'s Mot. Summ. J., ECF No. 11. On August 03,
12 2023, the Trustee filed her response to the Motion and supporting declaration containing
13 the relevant deeds and tax affidavits. Pl.'s Resp. to Mot., ECF Nos. 15 & 16. In her
14 response, the Trustee adopted an additional theory of liability against Mr. Olson based on
15 an equitable lien in favor of Mrs. Olson and requested more time to complete discovery.
16 Pl.'s Resp. to Mot. at 6:19-7:13. On August 7, 2023, Mr. Olson filed a reply supporting the
17 Motion. Def.'s Reply, ECF No. 17.

18 On August 10, 2023, the Court heard oral argument on the Motion. Following
19 argument, the Court continued hearing the Motion for the parties to complete discovery.
20 A status hearing on discovery was scheduled for September 28, 2023.

21 On September 21, 2023, the Trustee filed a supplemental response after deposing Mr.
22 Olson. Pl.'s Suppl. Resp., ECF No. 21. The Trustee's supplemental response was not
23 supported by declaration or properly authenticated transcripts. The parties renewed their
24 oral argument on the Motion at the status hearing held on September 28, 2023.
25 Thereafter, the Court ordered the Trustee to file a declaration with the authenticated
26 excerpts of the transcript of Mr. Olson's deposition by October 6, 2023, and set October
27

1 13, 2023, as the response date. The Court continued the Motion hearing to October 19,
2 2023, to allow for additional oral argument.

3 The Trustee did not file the declaration or authenticated transcript by the deadline
4 ordered by the Court but instead filed a second supplemental response to the Motion with
5 excerpts of the deposition transcript and business records on October 12, 2023, six days
6 after the deadline. Pl.'s Second Suppl. Resp., ECF No. 25. Mr. Olson filed a reply to the
7 second supplemental response on October 13, 2023. Def.'s Suppl. Reply, ECF No. 26.

8 On October 19, 2023, the Court held a second hearing and ordered the Trustee and
9 Mr. Olson's counsel to authenticate their extrinsic evidence submitted to the Court for
10 consideration with the Motion. On October 20, 2023, the Trustee submitted an
11 authenticated version of Mr. Olson's deposition transcript. *See* Pl.'s Auth. Trans., ECF No.
12 29. Mr. Olson's counsel submitted a declaration of authentication requesting that the
13 Court take judicial notice of certain documentary evidence pursuant to Fed. R. Evid. 201.
14 *See* Def.'s Dec. of Doc. Evid., ECF No. 30. All evidence is authenticated, the discovery
15 deadline has passed, and the Motion is now properly before the Court.

16 The previously scheduled November 2, 2023, pre-trial conference was continued to
17 November 16, 2023, because the Trustee did not appear, apparently due to illness. At the
18 continued pre-trial conference on November 16, 2023, both parties consented to the
19 Court's deemed amendment of the Complaint to include an equitable lien as well as the
20 Court's disposition regarding such equitable lien claim in connection with the Motion. *See*
21 Fed. R. Civ. P. 8(e) ("[p]leadings must be construed so as to do justice."); Fed. Bankr. R.
22 7015(b). *See also Apache Survival Coalition v. United States*, 21 F.3d 895, 910 (9th Cir.
23 1994) (when the parties raise issues at summary judgment that are outside the scope of
24 the complaint, courts construe this as a request to amend the pleadings out of time
25 pursuant to FRCP 15(b)).

II. FACTUAL BACKGROUND

The facts set forth in this section are undisputed by the parties.

A. THE PURCHASE OF THE BERRY STREET AND KING STREET HOUSES

In May 2015, Mr. Olson purchased the house located at 213 S. Berry St. Centralia, Washington (Lewis County Parcel no. 000961-000-000) (the “Berry Street House”) as an unmarried man. Dec. of Jeffrey Olson, ¶ 2; Ex. A, ECF No. 11-1. Mr. Olson married Mrs. Olson on or about June 29, 2018. Dec. of Jeffrey Olson, ¶ 3. On September 12, 2018, the Berry Street House was sold. Dec. of Jeffrey Olson, ¶ 4; Dec. of Leah Olson, ¶ 3, ECF No. 11-2. The Lewis County Title Company settlement statement lists Mr. Olson and Mrs. Olson as sellers of the Berry Street House. Dec. of Jeffrey Olson, Ex. B. Mr. Olson, and Mrs. Olson also jointly executed a warranty deed to the buyers of the Berry Street House. Dec. of Kathryn Ellis, Ex. 1, ECF No. 16-2. Lewis County Title Company issued two checks, payable jointly to Mr. Olson and Mrs. Olson, from the proceeds of the sale of the Berry Street House, one for \$49,894.13 and one for \$2,893.07. Dec. of Jeffrey Olson ¶ 4; Ex. D.

On September 12, 2018, the same day as the sale of the Berry Street House, \$49,894.13 in proceeds from the sale of the Berry Street House were wired to escrow for the purchase of another house located at 118 North King Street, Centralia, Washington (the “King Street House”). Dec. of Jeffrey Olson ¶ 4; Ex. B, C, D. The warranty deed real estate excise tax affidavit from purchasing the King Street House names “Jeffrey R. Olson, a married man” as the buyer and grantee. Dec. of Jeffrey Olson, Ex. E, F. On September 10, 2018, Mr. Olson financed the remaining balance of the purchase price of the King Street House by granting a deed of trust to “PRIME LENDING A, PLAINSCAPITAL COMPANY,” as “JEFFREY R. OLSON, A MARRIED MAN.” Dec. of Jeffrey Olson ¶ 7; Ex. G. The deed of trust and MERS Rider contain Mrs. Olson’s signature but do not list her as a borrower. Dec. of Jeffrey Olson ¶ 7; Ex. G. On the same day, Mrs. Olson executed a quit claim deed “to release community interest” to “Jeffrey R. Olson” as grantee. Dec. of Jeffrey Olson ¶ 8;

1 Ex. H; Dec. of Leah Olson ¶ 5 (the “2018 Quit Claim Deed”). Mrs. Olson and Mr. Olson
2 also recorded a real estate excise tax affidavit, which named Mrs. Olson as grantor and
3 “Jeffrey R. Olson, a married man” as grantee, claiming WAC No. 458-61 A-203 “TO
4 RELEASE COMMUNITY INTEREST.” Dec. of Jeffrey Olson ¶ 8; Ex. I; Dec. of Leah Olson
5 ¶ 5. Neither the 2018 Quit Claim Deed nor the real estate excise tax affidavit lists a
6 purchase price for releasing the community interest. Dec. of Jeffrey Olson ¶ 8; Ex. H, I.
7 There is no evidence in the record that the community or Mrs. Olson committed any
8 material funds for the acquisition of the King Street House, and all material funds are
9 traceable to the proceeds from the sale of the Berry Street House.

10 **B. THE REFINANCE OF THE KING STREET HOUSE**

11 On November 08, 2019, Mr. Olson refinanced the loan on the King Street House. Dec.
12 of Jeffrey Olson ¶ 10; Ex. J; Dec. of Leah Olson ¶ 6. The deed of trust names “JEFFREY
13 R. OLSON, AS HIS SEPARATE ESTATE” as the grantor. Dec. of Jeffrey Olson, Ex. J.
14 The deed of trust and MERS Rider for the refinance contain Mrs. Olson’s signature but do
15 not list her as a borrower. Dec. of Jeffrey Olson, Ex. J. On November 08, 2019, Mrs. Olson
16 executed another quit claim Deed “to release community interest” to “Jeffrey R. Olson, as
17 his separate estate” as grantee. Dec. of Jeffrey Olson, Ex. K; Dec. of Leah Olson ¶ 6 (the
18 “2019 Quit Claim Deed”). Mrs. Olson and Mr. Olson also recorded a real estate excise tax
19 affidavit, which named Mrs. Olson as grantor and “Jeffrey R. Olson, an unmarried
20 individual” as grantee, claiming WAC No. 458-61 A-203 “TO RELEASE COMMUNITY
21 INTEREST.” Dec. of Jeffrey Olson, Ex. K; Dec. of Leah Olson ¶ 6. Neither the 2019 Quit
22 Claim Deed nor the real estate excise tax affidavit lists a purchase price for releasing the
23 community interest. Dec. of Jeffrey Olson, Ex. H, I, K, L.

24 **C. MRS. OLSON’S BANKRUPTCY FILING**

25 On March 31, 2021, Mrs. Olson individually filed chapter 7 bankruptcy. Bank. 21-
26 40567-MJH, Voluntary Petition, ECF No. 1. Mr. Olson did not file as a joint debtor in the
27 bankruptcy case. Bank. 21-40567-MJH, ECF Nos. 1 and 31. Thus, the bankruptcy estate

1 includes all interests of Mrs. Olson in her separate property as well as all of Mr. and Mrs.
2 Olson's interests in community property defined in 11 U.S.C. §541 (b)(2) but not any of
3 Mr. Olson's separate property.

4 Mrs. Olson's filed bankruptcy schedules indicate that at the time of the bankruptcy
5 filing, Mrs. Olson lived at the King Street House with her children, ages 12, 13, and 17,
6 and her non-filing spouse, Mr. Olson. *See* Bank. 21-40567-MJH, Debtor's Official Form
7 122A-1, ECF No. 16, and Official Form 106J, ECF No. 15. Mrs. Olson's schedules indicate
8 that she held an interest in the King Street House, which she identified as community
9 property. Bank. 21-40567, ECF No. 15, p. 10. Mrs. Olson initially claimed an exemption
10 in the King Street House pursuant to RCW 6.13.010, 6.13.020, 6.13.030, Bank. 21-40567,
11 ECF No. 15, p. 10. The Trustee timely objected to the exemption pursuant to 11 U.S.C. §
12 522(g), based partly on the assertion that she had voluntarily transferred her interest in
13 the King Street House. Bank. 21-40567, ECF No. 17. While she continued to identify the
14 King Street House as community property in her schedules, she amended her exemption
15 schedule to remove the earlier claimed homestead exemption. Bank. 21-40567, ECF No.
16 25. On or about April 10, 2023, Mr. Olson sold the King Street House. Pl.'s Second Suppl.
17 Resp., Ex. 3 PSA.

18 **D. TRUSTEE'S FACTS ASSERTED IN SUPPORT OF THE EQUITABLE LIEN**

19 The Trustee alleges several facts supporting an alternative claim for relief that the
20 bankruptcy estate may assert an equitable lien against the King Street House or proceeds
21 from its post-bankruptcy sale. First, the Trustee states that the marital community jointly
22 made mortgage payments on the King Street House in the asserted amount of
23 approximately \$63,690.00 between September 2018 and Mrs. Olson's bankruptcy petition
24 in March 2021. Resp. to Mot., 2:12-2:19. The Trustee does not provide any evidence of
25 either the value to Mrs. Olson of residing in the King Street House or the respective
26 amounts paid by Mr. and Mrs. Olson towards the mortgage payments. However, Mr. Olson
27 does not dispute that the community made the mortgage payments from a joint bank

1 account. Second, the Trustee asserts that the community paid (1) to replace a toilet and
2 exhaust fan in the bathroom, (2) for a replacement microwave, (3) for a sliding glass door,
3 (4) for the installation of a new hot tub, and (5) for landscaping work. Pl.'s Suppl. Resp.,
4 1:23-2:5. Finally, the Trustee asserts that Mrs. Olson's mother paid to install an electric
5 car charger, which the buyers provided would stay with the property. Pl.'s Suppl. Resp.,
6 2:2-2:4. When the King Street House was sold, all the improvements were included as part
7 of the sale. The Trustee does not provide the amount the community paid for these
8 improvements but asserts in her pleadings generally that the post-bankruptcy sale of the
9 King Street House netted approximately \$92,000.00. Pl.'s Auth. Trans. p. 6.¹

11 III. DISCUSSION

12 A. SUMMARY JUDGMENT STANDARD AS APPLIED TO THIS CASE

13 The party seeking summary judgment bears the burden of demonstrating that there
14 are no genuine issues of material fact and that the movant is entitled to judgment as a
15 matter of law. Fed. R. Civ. P. 56(a), made applicable by Fed. R. Bankr. P. 7056; *Celotex*
16 *Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). All inferences drawn from the evidence
17 presented must be drawn in favor of the party opposing summary judgment, and all
18 evidence must be viewed in the light most favorable to that party. *Matsushita Elec. Indus.*
19 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment should be granted
20 if, after taking all reasonable inferences in the nonmoving party's favor, the court finds
21 that no reasonable jury could find for the nonmoving party. *Anderson v. Liberty Lobby,*
22 *Inc.*, 477 U.S. 242, 255 (1986). The responding party may not rest upon mere allegations
23 or denials of their pleadings but must set forth specific facts showing that there is a
24 genuine issue for trial. *Id.* at 256.

25
26 ¹ The Court notes that the Trustee asserts in her Supplemental Response that the net proceeds from
27 the sale of the King Street House amounted to \$92,4587.13 [sic]. Pl.'s Suppl. Resp. 2:6-2:8. This amount,
however, is not supported by any evidence in the record.

1 Accordingly, as the moving party, Mr. Olson bears the burden of establishing that
2 there are no genuine issues of material fact and that he is entitled to judgment as a matter
3 of law on the fraudulent transfer and equitable lien claims. All inferences from the
4 evidence presented are drawn in the light most favorable to the Trustee. If Mr. Olson
5 establishes that one element of the Trustee's claims for relief is not met, he is entitled to
6 judgment as a matter of law. *See Celotex*, 477 U.S. at 322–23 (the nonmoving party who
7 bears the burden of proof at trial must make a “sufficient showing” that he can establish
8 each element of his case at trial).

9 **B. FRAUDULENT TRANSFER LAW – IN GENERAL**

10 In support of her fraudulent transfer claims for relief, the Trustee relies on both state
11 and federal fraudulent transfer statutes: 11 U.S.C. §548 (a)(1)(B) and RCW 19.40.041

12 **1. Section 548(a)(1)(B).**

13 Section 548 of the Bankruptcy Code sets forth the powers of a trustee in bankruptcy
14 to avoid fraudulent transfers. 11 U.S.C. § 548. It permits avoidance of transfers of
15 interests of the bankruptcy estate made with actual intent to defraud creditors as well as
16 certain other transfers—so-called constructively fraudulent transfers. It is the latter
17 transfers that are at issue in this case. *See* 11 U.S.C. § 548(a)(1)(B).

18 The U.S. Supreme Court set forth the elements for constructive fraudulent transfers
19 under § 548(a)(1)(B) as follows:

20 The provision permits avoidance if the trustee can establish (1) that the debtor
21 had an interest in property, (2) that a transfer of that interest occurred within
22 one year of the filing of the bankruptcy petition, (3) that the debtor was
23 insolvent at the time of the transfer or became insolvent as a result thereof;
and (4) that the debtor received “less than a reasonably equivalent value in
exchange for such transfer.”

24 *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 535 (1994).

25 The Trustee bears the burden of proving each element of a fraudulent transfer by a
26 preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. 279, 111 (1991)); *W. Wire*
27 *Works, Inc. v. Lawler (In re Lawler)*, 141 B.R. 425, 428 (9th Cir. BAP 1992) (“[a] fair

1 reading of the Supreme Court's opinion leads to the inference that the preponderance
2 standard applies in all bankruptcy proceedings grounded in allegations of fraud.”). A
3 trustee may only avoid such transfers occurring within the two (2) years preceding a
4 bankruptcy petition. § 548(a)(1).

5 **2. RCW 19.40.041 via § 544(b).**

6 Section 544 of the code empowers a bankruptcy trustee to invoke state law to recover
7 certain of the debtor's prepetition transfers, including fraudulent or other avoidable
8 transfer. 11 U.S.C. § 544(b). Here, the Trustee has invoked RCW 19.40 et. seq., known as
9 the Uniform Voidable Transactions Act (“UVTA”), specifically RCW 19.40.041, which
10 states as follows:

11 (1) A transfer made or obligation incurred by a debtor is voidable as to a
12 creditor, whether the creditor's claim arose before or after the transfer was
13 made or the obligation was incurred if the debtor made the transfer or incurred
14 the obligation:

15 . . .

16 (b) Without receiving a reasonably equivalent value in exchange for the
17 transfer or obligation, and the debtor:

18 (i) Was engaged or was about to engage in a business or a transaction for which
19 the remaining assets of the debtor were unreasonably small in relation to the
20 business or transaction; or

21 (ii) Intended to incur, or believed or reasonably should have believed that the
22 debtor would incur, debts beyond the debtor's ability to pay as they became
23 due.

24 RCW 19.40.041(1)(b)

25 Like section 548, the UVTA imposes the burden of proof on the party alleging an
26 avoidable transfer to demonstrate each element by a preponderance of the evidence. RCW
27 19.40.041(3). Furthermore, Washington law imposes a four (4) year statute of limitations
on fraudulent transfer claims. RCW 19.40.091.

1 To prevail in a fraudulent transfer action, the Trustee must establish, based on a
2 preponderance of the evidence, that within the four-year look-back period before the
3 bankruptcy filing,² (1) there was a transfer; (2) of Mrs. Olson's property or community
4 property to Mr. Olson; (3) for which Mrs. Olson or the community did not receive a
5 reasonably equivalent value in exchange for such transfer; and (4) Mrs. Olson or the
6 community was insolvent at the time of transfer or was made insolvent as a result of the
7 transfer.

8 **3. Elements at issue in the Motion.**

9 Mr. Olson has not put forth any evidence disputing that Mrs. Olson or the marital
10 community was insolvent when she executed either the 2018 or 2019 Quit Claim Deeds,
11 nor does he dispute that Mrs. Olson executed such Quit Claim Deeds or that such
12 execution meets the definition of a “transfer” as such word is defined in § 101(54) (i.e.,
13 every “mode, direct or indirect, absolute or conditional, voluntary or involuntary, of
14 disposing of or parting with—(i) property, or (ii) with an interest in property.”). *See*
15 *Erickson v. Chase*, 156 Wn. App. 151, 159 (2010) (discussing that “[a] quitclaim deed
16 simply conveys . . . whatever interest the grantor may have in the property.”). Further,
17 Mr. Olson does not dispute that Mrs. Olson executed both Quit Claim Deeds in favor of
18 Mr. Olson for no value. The tax affidavits associated with both Quit Claim Deeds state
19 that Mrs. Olson received nothing for either release, and the only value given was the
20 nominal fee paid for recording the Quit Claim Deeds.

21 Instead, Mr. Olson’s argument in response to the Trustee’s asserted fraudulent
22 transfer claims rests solely on the assertion that no property of either Mrs. Olson or the
23 marital community was transferred to him by either of the two Quit Claim Deeds.
24 Specifically, Mr. Olson contends that the Berry Street House and the King Street House
25

26 ² The Court notes that the statute of limitations for which a trustee may avoid a transfer of the debtor
27 differs. *Compare* 11 U.S.C. §548(a)(1), *with* RCW 19.40.091. However, the parties have not raised a statute
of limitations issue concerning either transfer and the Court will not raise the issue *sua sponte*.

were his separate property; thus, to the extent a transfer occurred, it did not transfer any property of the estate (i.e., property held by Mrs. Olson or the community). The Trustee disputes such assertions, claiming that both Quit Claim Deeds constituted transfers of the community's interest in the Berry Street House and the King Street House. In sum, based on the parties' assertions, the Motion may only be granted regarding the fraudulent transfer claims if the Court finds that neither Mrs. Olson nor the marital community held an interest in the Berry Street House or the King Street House before either transfer.

The determination of whether Mrs. Olson or the marital community held an interest cannot be addressed in the Bankruptcy Code. Instead, resolution of the foregoing issue requires reference to Washington State law to define what, if any, property was transferred by either Quit Claim Deed. *Barnhill v. Johnson*, 503 U.S. 393, 398 (1992); *Butner v. United States*, 440 U.S. 48, 54 (1979) ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law").

IV. ANALYSIS

A. THE CHARACTER OF PROPERTY UNDER WASHINGTON LAW – IN GENERAL

Washington law heavily relies on presumptions to determine whether property is characterized as separate or community property. "The presumptions are true presumptions, and in the absence of evidence sufficient to rebut an applicable presumption, the court must determine the character of property according to the weight of the presumption." *In re Estate of Borghi*, 167 Wn.2d 480, 484 (2009). The character of property as separate or community property is determined at the date of acquisition. *Id.* Property subject to a mortgage is acquired when the obligation is undertaken. *Id.* (citing Harry M. Cross, The Community Property Law, 61 Wash. L. Rev. 13, 39 (1986)); *see also*, *In re Estate of Binge*, 5 Wn.2d 446, 454 (1940); *Beam v. Beam*, 18 Wn. App. 444, 453 (1977). Once property is established as separate or community property, it is presumed that it

maintains that character absent *clear and convincing* evidence to the contrary. *Guye v. Guye*, 63 Wn. 340, 352 (1911).

With a few exceptions, Washington law generally presumes the character of property based on whether it was acquired before or after marriage and that the status retains its character until changed either by agreement of the parties or by operation of law. *In re Dougherty's Est.*, 27 Wn.2d 11, 18 (1947). Property owned by one spouse before marriage or acquired during marriage by “gift, bequest, devise, descent, or inheritance” is presumed separate property. *See Id.*; RCW 26.16.010. Conversely, property acquired after marriage is generally presumed to be community property, regardless of how the title is held. *See* RCW 26.16.030; *Dean v. Lehman*, 143 Wn.2d 12, 19 (2001). When property is acquired during the marriage, however, the determination of its character hinges upon whether it was acquired “with community funds and community credit, or separate funds and the issues and profits thereof; the presumption, which may be rebutted by proof, being that it is community property.” *Binge's Est.*, 5 Wn.2d at 484. “The burden of rebutting this presumption is on the party challenging the asset's community property status, and ‘can be overcome only by clear and convincing proof that the transaction falls within the scope of a separate property exception.’” *Id.* at 19–20 (internal citations omitted) (quoting *Estate of Madsen v. Comm'r of Internal Revenue*, 97 Wn.2d 792, 796 (1982), overruled in part on other grounds by *Aetna Life Ins. v. Wadsworth*, 102 Wn.2d 652, 659–60 (1984)).

Similarly, separate property retains its character through “all of its changes and transitions,” but only to the extent that such changes are “clearly traced and identified.” *In re Witte's Est.*, 21 Wn.2d 112, 125 (1944) (quoting *In re Brown's Est.*, 124 Wn. 273, 276 (1923)). Furthermore, “[w]here separate funds have been so commingled with community funds that it is no longer possible to distinguish or apportion them, all of the commingled fund, or the property acquired thereby, is community property.” *In re Witte's Est.*, 21 Wn.2d 112, 125 (1944). *But see Binge's Est.*, 5 Wn.2d at 466 (“[W]hen the community

1 property is inconsiderable in comparison with the separate property, the mass remains
2 separate.”)

3 RCW 26.16.050, which addresses transfers between spouses, provides in relevant part
4 as follows:

5 A spouse . . . may give, grant, sell or convey directly to the other spouse . . . his
6 or her community right, title, interest or estate in all or any portion of their
7 community real property: And every deed made from one spouse to the other .
8 . . shall operate to divest the real estate therein recited from any or every claim
9 or demand as community property and shall vest the same in the grantee as
separate property. The grantor in all such deeds, or the party releasing such
community interest or estate shall sign, seal, execute, and acknowledge the
deed as a single person without the joinder therein of the married party . . .
named as grantee . . .

10 RCW 26.16.050. The statute provides how one spouse may divest themselves of an interest
11 in community real property through conveyance to the other spouse, which vests in the
12 grantee as separate property. These conveyances have long been considered clear and
13 convincing evidence of creating *or maintaining the character of property as separate*
14 *property*. See, e.g., *Bryant*, 28 Wn.2d at 747; *Findley v. Findley*, 193 Wn. 41, 47 (1937);
15 *Shorett v. Signor*, 58 Wn. 89, 96 (1910); *Borghi*, 167 Wn.2d at 489.

16 Spouses may transmute community property into separate property or vice versa when
17 the party holding the property has a clear intent to do so. *Borghi*, 167 Wn.2d at 484. As
18 stated in *Borghi*, “it will be presumed that it maintains that character until some *direct*
19 *and positive evidence* to the contrary is made to appear.” *Id.* (emphasis added). The party
20 asserting transmutation or commingling must demonstrate such intent by the party
21 holding the property as separate to change the character either by direct action or by
22 indirect actions which show a lack of intent to maintain the character of the property (e.g.,
23 through commingling that prevents tracing). *Id.* at 485. See also *Witte's Est.*, 21 Wn. 2d
24 at 126–30 (finding commingling of farm income by spouse owning separate property to
25 such an extent that it was impossible to disentangle or apportion the parts from the mass);
26 *In re Marriage of Shui & Rose*, 132 Wash. App. 568, 583 (2005) (holding that proceeds of
27

1 stock options having a mixed character when commingled so that it is impossible to trace
2 are, by law, entirely community property).

3 **B. THE 2018 QUIT CLAIM DEED**

4 **1. The Berry Street House and its Proceeds are Presumed to Be Mr.**
5 **Olson's Separate Property.**

6 Mr. Olson purchased the Berry Street House in 2015 as an unmarried man, and as
7 such, it is unequivocally presumed to be his separate property under Washington law.
8 *Dougherty's Est.*, 27 Wn.2d at 18; RCW 26.16.010. While Mr. Olson and Mrs. Olson
9 married in 2018, unless clear and convincing evidence shows that Mr. Olson intended to
10 transmute the property into community property, it retained its separate character while
11 he owned the Berry Street House.

12 Mr. Olson sold the Berry Street House in 2018 to purchase the King Street House.
13 Washington law presumes that separate property retains its character throughout all its
14 changes and transitions, such as liquid proceeds, so long as it remains traceable and
15 identifiable. *See Witte's Est.*, 21 Wn.2d at 125. Furthermore, absent clear and convincing
16 evidence to the contrary, the proceeds from the sale of the Berry Street House retained its
17 character as Mr. Olson's separate property. *See Guye*, 63 Wn. at 352. Accordingly, a strong
18 presumption exists that the proceeds from the Berry Street House remained Mr. Olson's
19 separate property.

20 **2. The Trustee has not rebutted the presumption that the Berry Street**
21 **House and its Proceeds were Mr. Olson's separate property.**

22 The Trustee must present clear and convincing evidence to rebut the presumption and
23 show that a reasonable trier of fact could find, based on the evidence in the record, that
24 Mr. Olson intended to transmute the Berry Street House and its proceeds to community
25 property before its sale in 2018.

26 In support, the Trustee asserts that Mr. Olson and Mrs. Olson were named as sellers
27 of the Berry Street House on the Lewis County Title Company sale documents.

1 Furthermore, upon the sale of the Berry Street House, Lewis County Title Company issued
2 checks payable to both Mr. Olson and Mrs. Olson. Finally, the Trustee points to the
3 warranty deed executed by Mr. Olson and Mrs. Olson as grantors for the sale of the Berry
4 Street House.

5 The Trustee's evidence, however, does not raise factual issues as to Mr. Olson's intent
6 but instead presents undisputed facts displaying the actions of Lewis County Title
7 Company. The Trustee does not assert that Mr. Olson personally completed the purchase
8 and sales agreement paperwork, nor does the Trustee assert that Mr. Olson directed Lewis
9 County Title Company to issue the checks to himself and Mrs. Olson. To transmute
10 property into the marital community, the party alleging transmutation must support the
11 allegation with evidence of the owner's intent to transmute or commingle. Neither the
12 sales paperwork nor the checks evidence either because the amounts on the checks are
13 traceable and identifiable as sale proceeds and were done by Lewis County Title
14 Company—not Mr. Olson.

15 More than the warranty deed and joint check issued by a title company is needed to
16 show Mr. Olson transmuted the Berry Street House into the marital community before
17 the sale. If accompanied by additional evidence of Mr. Olson's intent, the warranty deed
18 could show that Mr. Olson intended to transmute the Berry Street House into the marital
19 community before the sale. *See* RCW 26.16.030(3) ("Neither person shall sell, convey, or
20 encumber the community real property without the other spouse . . . joining in the
21 execution of the deed . . . and such deed or other instrument must be acknowledged by
22 both spouses."). However, this alone is insufficient to rebut the presumption that the Berry
23 Street House was and remained Mr. Olson's separate property. *See Binge's Est.*, 5 Wn.2d
24 at 484 (the party challenging community property status can only overcome a presumption
25 by clear and convincing evidence). After examining the presented evidence in the most
26 favorable light for the Trustee, it is insufficient to satisfy the burden required to rebut the
27 presumption that the Berry Street House and its traceable proceeds were Mr. Olson's

1 separate property. *See Liberty Lobby*, 477 U.S. at 255 (taking all reasonable inferences in
2 the nonmoving party's favor, the court finds that no reasonable jury could find for the
3 nonmoving party). In sum, the Court finds that the Berry Street House and its traceable
4 liquid proceeds are Mr. Olson's separate property.

5 **3. The King Street House was purchased with proceeds from Berry Street**
6 **House, maintained as Olson's separate property, and the Trustee has**
7 **failed to rebut the presumption.**

8 It is undisputed that Mr. Olson applied substantially all the net proceeds from the sale
9 of the Berry Street House directly to the purchase of the King Street House. Lewis County
10 Title Company wired most of the proceeds from the sale, \$49,894.13, to be directly applied
11 to purchasing the King Street House, and the remaining \$2,893.07 in a check to the
12 Olsons. Dec. of Jeffrey Olson ¶ 4; Ex. B, C, D. There is no evidence in the record that
13 significant community funds were used to purchase the King Street House. As previously
14 noted, property acquired during marriage with separate property and proceeds of such
15 property are presumed separate property. *See Id.* 484. Accordingly, a presumption for
16 separate property exists to the extent that the proceeds from the Berry Street House paid
17 for the King Street House.

18 Furthermore, the undisputed facts show that Mr. Olson separately financed the
19 remaining purchase price of the King Street House by obtaining a loan. The deed of trust
20 securing the loan names Mr. Olson as the sole borrower and grantor under the note and
21 deed of trust. Thus, the undisputed facts show that Mr. Olson was the sole purchaser of
22 the King Street House and, upon acquisition, that the King Street House was Mr. Olson's
23 separate property. *See Borghi*, 167 Wn.2d at 484 (property subject to a mortgage is
24 acquired when the obligation the obligation is undertaken). It is undisputed that Mrs.
25 Olson executed the 2018 Quit Claim Deed to Mr. Olson contemporaneously with
26 purchasing the King Street House. Washington law establishes such a conveyance as an
27

1 unequivocal intent to keep the King Street House as separate property. *See Johnson*, 41
2 Wn.2d at 249; RCW 26.16.050.

3 The undisputed evidence creates a presumption that the Berry Street House was Mr.
4 Olson's separate property and that Mr. Olson also intended for the King Street House to
5 be Mr. Olson's separate property. Mr. Olson has met his burden that he had the
6 unequivocal intention of making the King Street House his separate property. The Trustee
7 has not offered any evidence that raises material issues of fact concerning the character
8 of either the King Street House or the Berry Street House when Mr. Olson purchased the
9 King Street House in 2018. Accordingly, the Court finds that Mr. Olson has established
10 that the King Street House was his separate property and not subject to any interest held
11 by the marital community.

12 **4. Mr. Olson is entitled to summary judgment on the fraudulent transfer**
13 **claim related to the 2018 Quit Claim Deed.**

14 The court finds that, as previously noted, while a quit claim deed falls within the
15 meaning of transfer, the mere execution of a quit claim deed is not enough because it only
16 transfers whatever interest that the grantor has at the time of its execution that is capable
17 of transfer. *Crafts v. Pitts*, 161 Wn.2d 16, 20 (2007); *McCoy v. Lowrie*, 44 Wn.2d 483, 486
18 (1954) (quoting K.A. Drechsler, Annotation, Rights or Interests Covered by Quitclaim
19 Deed, 162A.L.R. 556, 557(1946)) Having found that the Berry Street House, the proceeds
20 of the Berry Street House and the King Street House acquired with such proceeds were
21 all Mr. Olson's separate property, the Court finds that no property interest held by Mrs.
22 Olson's estate was transferred pursuant to the 2018 Quit Claim Deed. Accordingly, Mr.
23 Olson is entitled to summary judgment on the fraudulent transfer claims related to such
24 deed because the Trustee cannot establish an essential element of her fraudulent transfer
25 claim.

1 **C. THE 2019 QUIT CLAIM DEED**

2 **1. The King Street House was Mr. Olson's separate property and retained**
3 **its character as separate property.**

4 Mr. Olson asserts that the 2019 Quit Claim Deed could not constitute a fraudulent
5 transfer. Specifically, when he refinanced the King Street House, it was his separate
6 property, and, like the 2018 Quit Claim Deed, neither Mrs. Olson nor the marital
7 community held any interest that the 2019 Quit Claim Deed could have transferred.

8 Based on the undisputed facts, the Court has determined that, as a matter of law, a
9 presumption exists that Mr. Olson and Mrs. Olson intended to maintain the King Street
10 House as Mr. Olson's separate property at the time of purchase in 2018. Mr. Olson
11 remained the only obligor under the deed of trust and promissory note throughout the
12 loan's life. The Trustee has not produced evidence that Mr. Olson intended to transmute
13 the King Street House or commingled the property with the marital community.
14 Therefore, beginning with the purchase in 2018 up until the refinance in 2019, a
15 presumption existed that the King Street House is presumed to have been Mr. Olson's
16 separate property.

17 Mr. Olson refinanced the King Street House in 2019. The refinancing does not change
18 the character of the King Street House, but rather, it retains its character as separate
19 property absent a showing to the contrary. *See Guye*, 63 Wn. at 352. Like its predecessor,
20 the refinanced deed of trust names Mr. Olson as the sole borrower and grantor under the
21 note and deed of trust. Indeed, throughout the refinance process, the property remained
22 a single unit that was identifiable and traceable as separate property. Accordingly, a
23 strong presumption exists that the King Street House retained its character as Mr. Olson's
24 separate property.

25 Mrs. Olson executed the 2019 Quit Claim Deed to Mr. Olson contemporaneously with
26 the refinance of the King Street House. Like the 2018 Quit Claim Deed, Washington law
27 establishes such a conveyance as an unequivocal intent to maintain the property as

1 separate. *See Johnson*, 41 Wn.2d at 249; RCW 26.16.050. The 2019 Quit Claim Deed
2 establishes an unequivocal intent to keep the King Street House as Mr. Olson's separate
3 property. Accordingly, based on the undisputed facts, a presumption exists that the King
4 Street House at the time of the refinance in 2019 was Mr. Olson's separate property.

5 **2. The Trustee has failed to present evidence indicating that Mr. Olson**
6 **intended to transmute the King Street House into the marital**
7 **community.**

8 With respect to the 2019 Quit Claim Deed, the Trustee must present genuine issues of
9 material fact that could conceivably rebut the presumption that the King Street House
10 was separate property. Moreover, the Trustee must present evidence that a reasonable
11 trier of fact at trial could find that Mr. Olson, through act or deed, intended to transmute
12 the King Street House from his separate property to community property between the
13 purchase in 2018 through the refinance in 2019 when Mrs. Olson executed the 2019 Quit
14 Claim Deed.

15 The Trustee relies on the following evidence to support her fraudulent transfer claim
16 as to the 2019 Quit Claim Deed. First, she argues that because Mr. Olson submitted copies
17 of a joint bank account to support the refinance in 2019, it shows an intent to rely on the
18 community credit. However, the face of the loan documents and deed do not support such
19 an assertion. Pl.'s Second Supp. Resp. Mot. Summ. J. Ex. 1. Second, the Trustee asserts,
20 which Mr. Olson does not dispute, that marital funds were used to make mortgage
21 payments on the King Street House. Restated, the Trustee asserts that Mr. Olson
22 transmuted the King Street House into community property before the refinance in 2019.
23 Finally, the Trustee asserts that Mrs. Olson's identification of the King Street House as
24 community property two years after the 2019 Quit Claim deed supports the transmutation
25 of the King Street House into community property.

26 Once more, the Trustee's evidence is insufficient to rebut the presumption of the
27 separate nature of the King Street House as of the date of the 2019 Quit Claim Deed.

1 Characterization of property acquired during the marriage depends on what assets and
2 obligations were used to acquire such property. *Binge's Est.*, 5 Wn.2d at 484. The King
3 Street House was already separate property, and the refinance does not reset the time one
4 determines acquisition. *See Borghi*, 167 Wn.2d at 484 (the character of property subject to
5 a mortgage is determined at the date of acquisition.). Even if it did, the result is the same
6 because Mr. Olson obligated only himself on the refinanced loan. No community assets
7 were used to refinance the loan.

8 The Trustee is incorrect that maintenance payments on a mortgage evidence Mr.
9 Olson's intent to transmute the King Street House into community property. Washington
10 law provides that using community funds to pay off a mortgage on a separate property
11 does not change the property's status but, at most, entitles the community to an equitable
12 lien against the property. *See Merkel v. Merkel*, 39 Wn.2d 102, 114–15 (1951); *In re*
13 *Marriage of Harshman*, 18 Wn. App. 116, 123 (1977); *Seaton v. Smith*, 186 Wn. 447, 452
14 (1936); *Guye*, 63 Wn. at 352–53; *Dobbins v. Dexter Horton & Co.*, 62 Wn. 423, 428 (1911).
15 Thus, community property contributions committed to the payments of such obligations
16 or improvements to separate property *may* give rise to a right of reimbursement in favor
17 of the marital community enforceable through an equitable lien, but that does not result
18 in the transmutation of the property from separate to community property. *See Borghi*,
19 167 Wn.2d at 490 n.7 (emphasis added). Accordingly, the Trustee has failed to rebut the
20 presumption that the King Street House retained its character as Mr. Olson's separate
21 property.

22 **3. Neither Mrs. Olson nor the marital community held any interest in the**
23 **King Street House when she executed and delivered the 2019 Quit**
24 **Claim Deed.**

25 Just as with the 2018 Quit Claim Deed, neither Mrs. Olson nor the marital community
26 held an interest in the King Street House when she executed and delivered the 2019 Quit
27 Claim Deed because it was Mr. Olson's separate property. Thus, the 2019 Quit Claim

1 Deed, to the extent that an ineffective quit claim deed falls under the definition of transfer,
2 did not transfer any property that Mrs. Olson or the marital community held an interest
3 in.

4 Accordingly, as the movant, Mr. Olson has established, as a matter of law based on the
5 undisputed facts, that he is entitled to summary judgment on the Trustee's asserted
6 fraudulent transfer related to Mrs. Olson execution of the 2019 Quit Claim Deed because
7 the Trustee is unable to establish an essential element of such claim (i.e., that a transfer
8 of an interest of property of the estate occurred).

9 **D. EQUITABLE LIEN**

10 **1. Equitable liens are security devices that arise when equity requires one** 11 **to enforce a right of reimbursement.**

12 The Trustee contends that even if neither Mrs. Olson nor the marital community held
13 a property interest in the King Street House, the Court should find that a right of
14 reimbursement in favor of the marital community existed, arising from contributions and
15 improvements made to the King Street House at the expense of the marital community,
16 and impose an equitable lien to enforce such right.

17 An equitable lien is nothing more than a security device imposed to secure a right of
18 reimbursement. Equitable liens arise when a debt is owed in spouse-to-spouse or third-
19 party-to-spouse transactions. As the name suggests, equitable liens arise under equitable
20 principles to secure a debt not expressly provided for under the law. Washington caselaw
21 refers to such debt as a "right of reimbursement." *See Lindemann v. Lindemann*, 92 Wn.
22 App. 64, 74 (1998); *Nelson v. Nelson Neal Lumber Co.*, 171 Wn. 55, 61 (1932). The party
23 alleging that a right of reimbursement exists has the burden of proving the existence and
24 amount of such right upon a clear and convincing standard. *Elam v. Elam*, 97 Wn.2d 811,
25 816 (1982).

26 Under Washington law, a right of reimbursement often arises between spouses in the
27 context of breaches of fiduciary duty. In Washington, spouses owe a duty to the marital

community and must manage it in its best economic interests. See *In re Marriage of Hadley*, 88 Wn.2d 649, 655 (1977) (addressing the duty of good faith); *In re Madden's Est.*, 176 Wn. 51, 55 (1934) (addressing the entire fairness standard in marital transactions). Using community property or labor to improve the separate property may constitute a breach of fiduciary duty. See *W. T. Rawleigh Co. v. McLeod*, 151 Wn. 221, 224 (1929); *In re Marriage of Jafeman*, 29 Cal. App. 3d 244, 256 (Ct. App. 1972); *Binge's Est.*, 5 Wn.2d at 485; *In re Woodburn's Estate*, 190 Wn. 141, 144–45 (1937); *In re Finn's Estate*, 106 Wn. 137, 140 (1919).

Fairness may also dictate the imposition of an equitable lien because one spouse has engaged in conduct such that equity dictates such a remedy. This basis for reimbursement is wholly and “undoubtedly predicated upon equitable considerations” and often involves third parties. Harry M. Cross, *The Community Property Law in Washington*, 49 Wash. L. Rev. 729, 776 (1974); See also Harry M. Cross, *The Community Property Law (Revised 1985)*, 61 Wash. L. Rev. 13, 46 (1986). A creditor’s rights may give rise to requiring reimbursement and perhaps even imposing an equitable lien, even when the spouse is not requesting it. See *Conley v. Moe*, 7 Wn.2d 355 (1941) (concluding that the trustee in bankruptcy could assert the community equitable lien against improved separate realty).

If the marital community has contributed the labor or funds and has benefitted from the contribution, no right of reimbursement exists because no debt exists. *Miracle v. Miracle*, 101 Wn.2d 137, 139 (1984). As the Washington Supreme Court stated in *Miracle*:

An equitable lien is a remedy intended to protect one party's right to reimbursement. *In re Marriage of Harshman*, 18 Wash.App. 116, 567 P.2d 667 (1977); Cross, *The Community Property Law in Washington*, 49 Wash.L.Rev. 729, 776 (1974). A right to reimbursement may not arise if the contributing spouse received a reciprocal benefit flowing from the use of the property. *Merkel v. Merkel*, 39 Wash.2d 102, 234 P.2d 857 (1951); *In re Woodburn's Estate*, 190 Wash. 141, 66 P.2d 1138 (1937); *In re Marriage of Johnson*, 28 Wash.App. 574, 625 P.2d 720 (1981); *In re Marriage of Harshman*, supra. In that case, equity will find that the contributing spouse has already been reimbursed. Cross, 49 Wash.L.Rev. at 777 n. 220, 779.

1 *Id.* Restated, the individual claiming the right to reimbursement must have provided more
2 than the worth of the mutual benefit acquired, if any.

3 **2. The Trustee has failed to demonstrate how the marital community is**
4 **entitled to a right of reimbursement.**

5 To prevail in imposing an equitable lien in favor of the Trustee, the Trustee bears the
6 burden of providing clear and convincing evidence (1) of the existence of a debt owed by
7 the marital community arising out of contributions and improvements made by the
8 marital community to the King Street House, and (2) that the principles of equity require
9 the Court to impose an equitable lien to secure repayment of the debt. Notwithstanding
10 that asserting a right of reimbursement requires an independent cause of action or
11 statutory grant,³ the Trustee, stepping into Mrs. Olson's shoes, has failed to establish how
12 she could prevail under such a theory.

13 The Trustee asserts various contributions and improvements made by the marital
14 community to the King Street House. The Trustee argues that the marital community paid
15 mortgage payments and paid for improvements on the house, including adding new
16 appliances, a hot tub, a toilet and exhaust fan, a car charging station, and landscaping.
17 Mr. Olson contends that Mrs. Olson received a reciprocal benefit by occupying and using
18 his separate property, which exceeded any improvements or mortgage contributions made
19 by the marital community.

20 Even if the Court assumes that all the Trustee's assertions regarding marital
21 contributions and improvements are true, which Mr. Olson does not dispute, the marital
22 community's imputed contribution is insufficient to give rise to a right of reimbursement.
23 It is the Trustee's burden to show that the marital contributions exceed the reciprocal
24 benefit. *See Elam*, 97 Wn.2d at 816. *See also Miracle*, 101 Wn.2d at 139. Community funds
25 used to pay maintenance payments, such as mortgage payments, do not give rise to a right

26 ³ *See Miracle*, 101 Wn.2d at 138 (trial in the dissolution proceeding); *Conley* 7 Wn.2d at 359; *see also*
27 RCW 26.09.080.

1 of reimbursement unless such payments exceed the value of occupancy. *Id.* See Also
2 *Merkel*, 39 Wn.2d 102 (1951); *In re Woodburn's Estate*, 190 Wn. 141 (1937); *In re Marriage*
3 *of Johnson*, 28 Wn. App. 574 (1981).

4 The Trustee asserts that the marital community paid approximately \$26,600 in
5 mortgage payments towards the King Street House between September 2018 and the
6 refinance in 2019 and approximately \$63,690 over 32 months. Pl.'s. Resp. Mot. Summ. J.,
7 2:11-2:19. The Trustee's allegation, however, is not supported by any evidence before the
8 Court, and even if the marital community made mortgage payments on the King Street
9 House, the Trustee has failed to demonstrate how the mortgage contributions could have
10 exceeded the reciprocal benefit of using the property.

11 . The Trustee does not provide specific amounts for any improvement and only
12 approximations for the amount the marital community paid for the hot tub, which was
13 between \$6,000.00 and \$8,000.00. Pl.'s Auth. Trans. p. 17. The rule of measurement when
14 the conduct concerns improvement to property is found in *In re Marriage of Elam*, holding
15 that the community is entitled reimbursement representing the increase in value to the
16 separate property due to the community contribution in its improvement, *plus* the
17 inflationary increase in that amount if any exists. 97 Wn.2d 811, 816 (1982). The Trustee's
18 mere assertions that the marital community contributions give rise to a right of
19 reimbursement are insufficient. See *Liberty Lobby*, 477 U.S. at 255 (nonmoving party may
20 not rest upon mere allegations).

21 The Trustee has failed to demonstrate that a right of reimbursement could even have
22 existed, let alone that such right of reimbursement merits the imposition of an equitable
23 lien. Accordingly, the Court finds the Trustee's assertion concerning an equitable lien is
24 without merit.

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V. CONCLUSION

Based on the undisputed facts presented, Mr. Olson has established that neither of the Quit Claim Deeds, in 2018 and 2019, involved transfers of the estate's interests in property, as the marital community held no interest in either the Berry Street House or the King Street House at the time of the execution of such Quit Claim Deeds. Accordingly, the elements of a constructively fraudulent transfer under either § 548(a)(1) or RCW 19.40.041 via § 544(b) are not satisfied as a matter of law. Additionally, the Trustee has failed to provide sufficient evidence to establish a right to an equitable lien as a matter of law, and the Court grants summary judgment in favor of Mr. Olson on such claim.

/// End of Memorandum Decision ///